

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

KEVIN TURNER AND SHAWN  
WOODEN, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE and  
NFL PROPERTIES LLC, successor-in-  
interest to NFL Properties, Inc.

Defendants.

No. 12-md-2323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**EXPLANATION AND ORDER**

On April 22, 2015, I entered an order approving the class action settlement in the NFL MDL (12-md-2323). *In re Nat'l Football League Players' Concussion Inj. Litig.*, 307 F.R.D. 351 (E.D. Pa. 2015). The Settlement Agreement provided for the use of race in evaluating cognitive impairment. Settlement Agreement, Ex. 2 §§ 3, 4. Although numerous objections were raised, none objected to the use of race.<sup>1</sup> On April 18, 2016, the Third Circuit, after considering all the

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<sup>1</sup> As best as I can tell, Henry and Davenport did not file any objections to the Settlement Agreement. Their current counsel, Zuckerman Spaeder, did file objections on behalf of other clients. ECF Nos. 6242, 6453; *see also* Brief of Appellees Jimmie H. Jones, Ricky Ray & Jesse Solomon, *In re Nat'l Football League Players' Concussion Inj. Litig.*, 821 F.3d 410 (3d Cir. 2016) (15-02291).

objections, affirmed the approval of the settlement. *In re Nat'l Football League Players' Concussion Inj. Litig.*, 821 F.3d 410 (3d Cir. 2016).

Four years later, on August 25, 2020, Henry and Davenport filed a lawsuit challenging as discriminatory the Settlement Agreement's use of race in evaluating cognitive impairment. Compl., *Henry v. Nat'l Football League*, No. 20-cv-04165 (E.D. Pa. Aug. 25, 2020), ECF No. 1. I dismissed the lawsuit as an improper collateral attack on the class action Settlement Agreement. Order, *Henry*, No. 20-cv-04165 (E.D. Pa. Mar. 8, 2021), ECF No. 40.

Appreciating that Henry and Davenport, through their counsel Zuckerman Spaeder, had raised a very important issue—particularly in the context of the 65-year life of the Settlement Agreement—and that the Settlement Agreement provided for possible adjustment of its terms in the future,<sup>2</sup> I decided to take the unusual step of attempting to reach some understanding of how this issue might be amicably resolved outside an adversarial setting.

With this in mind, I referred the NFL and Class Counsel Seeger Weiss—the original parties that drafted the Settlement Agreement—to Magistrate Judge David Strawbridge to seek to address the concerns relating to the race-norming issue. I await a report from Judge Strawbridge as soon as practicable regarding this mediation, including comment upon the involvement of individuals beyond the NFL and Class Counsel in this process.

**AND NOW**, on this 8th day of April, 2021, it is **ORDERED** that the Court **RESERVES DECISION** on Henry and Davenport's Motion to Intervene and to Stay Mediation (ECF No. 11306).

s/ANITA B. BRODY, J.  
ANITA B. BRODY, J.

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<sup>2</sup> Settlement Agreement § 6.6.